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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND APPENDIX

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania

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IN RE: ESTATE OF
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Cora Hubbard Williams, respectfully prays that a writ of certiorari issue in the above captioned case directed to the Supreme Court of Pennsylvania to review that Court's Judgment (App. 11) dated and entered on March 21, 1963, in proceedings at Miscellaneous Docket No. 2483, whereby the highest judicial tribunal of the Commonwealth of Pennsylvania erroneously denied her Petition for Change of Venue (App. 2-11).

Questions Presented.

NO OPINIONS BELOW

The Order of the Supreme Court of Pennsylvania (App. 11) sought to be reviewed herein was not accompanied by an opinion, and is not reported.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under 28 U.S.C.A., Section 1257 (3).

The Judgment of the Supreme Court of Pennsylvania (App. 11) sought to be reviewed herein was dated and entered on March 21, 1963. The time for filing this petition for writ of certiorari, therefore, expires on June 19, 1963.

QUESTIONS PRESENTED

1. Does not a litigant have the right to be heard in advance of judgment, pursuant to the provisions of the Fourteenth Amendment to the Constitution of the United States?

2. When the State Courts have deprived a citizen of the right to be heard in advance of judgment, have not those State Courts deprived such litigant of property without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States?

3. When the trial Court of a state unlawfully has denied a litigant the right to a hearing on the issue of fraud in the procurement of an adjudication of incompetency, and the highest judicial tribunal of that state,

which sanctioned such denial of hearing, has the authority and power in an original proceeding to change the venue of the cause but refuses to do so; has not the litigant thus been deprived of property and individual liberties without due process of law in violation of the provisions of the Fourteenth Amendmen to the Constitution of the United States?

4. Should not a Pennsylvania State Supreme Court Judgment, whereby a citizen has been deprived of property and important rights without due process of law, be reviewed and reversed by this Honorable Court?

CONSTITUTIONAL PROVISION INVOLVED

The provision of the Constitution of the United States involved herein is the Fourteenth Amendment, the pertinent portion of which is as follows:

"AMENDMENT XIV

Section I. . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law. . . ."

STATEMENT OF THE CASE

The petitioner, Cora Hubbard Williams, seeks a review of the Judgment (App. 11) of the Supreme Court of Pennsylvania, which is the highest judicial tribunal of the Commonwealth of Pennsylvania, whereby her Petition for Change of Venue (App. 2-11) was denied.

Through her Petition for Change of Venue Mrs. Williams of Pittsburgh, Pennsylvania, sought an order in the Pennsylvania Supreme Court that a certain proceeding at No. 2750 of 1955 in the Orphans' Court of Allegheny County, Pennsylvania, be transferred to another county of the vicinage or, in the alternative, that an Orphans' Court Judge of another county in Pennsylvania be assigned to Allegheny County to hear the matter, because of the local Court's prejudice.

The said Orphans' Court proceeding was entitled In Re: Estate of Cora Hubbard Williams, an alleged incompetent. The proceeding was instigated by her daughter (and only child) and commenced on June 20, 1955, through the daughter's Petition for Appointment of Guardians for the Estate of an Alleged Incompetent purportedly pursuant to the Pennsylvania Incompetents' Estates Act. At that time petitioner's daughter was Miss Cora Maltz Williams. Since her marriage in September of 1956 to one Britton Murdoch, she has been and is now known as Mrs. Cora Williams Murdoch, and resides at Haverford, Pennsylvania.

The expressed and only allowable purpose of such a proceeding is to protect the alleged incompetent's Estate from designing persons. Your petitioner analogously cited to the Pennsylvania State Courts' authorities

wherein the Pennsylvania Supreme Court (App. 3) had repeatedly pronounced the dangers of the Incompetents' Estates Act and decided that it is "easily capable of abuse by designing relatives to accomplish the very wrong intended to be guarded against"; and held in *Bryden's Estate* (App. 3) that "This is a very clear case of attempt by children to take their mother's property out of her control not in her interest but in their own, and is an illustration of the dangers of the statute". The truth, however, about your conservative petitioner is that she had never been the victim of designing persons until she became the victim of her designing daughter, and those in combination with her, through the State Court proceedings.

For a considerable time prior to the commencement of said proceeding, the petitioner's wayward daughter had been scheming and planning the maneuvers by which she would obtain possession and control of her mother's multi-million dollar Estate, although your petitioner had already established a $300,000.00 trust fund at the Mellon National Bank and Trust Company which would provide a life income to her daughter of about $1,000.00 per month.

Petitioner's daughter engaged the services of her close friend and a then Philadelphia attorney (who had been a member of the Bar for only a few months), James B. Craig, Esquire, who unfortunately was an alcoholic. Together they planned a fraudulent adjudication of incompetency against your petitioner, to be followed by her ultimate confinement in the "care" of Attorney Craig's own psychiatrist in Philadelphia. While their scheme was still in the planning stage during the latter

part of May, 1955, your petitioner was mistakenly and wrongfully incarcerated in the New Jersey State Hospital for the Insane at Trenton, as the result of a drinking problem which had become aggravated by reason of her daughter's lack of affection, infidelity and even hatred toward your petitioner and her relatives. Incidentally, immediately after the commencement of Mrs. Williams' confinement, her drinking problem completely ceased.

Prior to this incarceration, the petitioner's daughter had tried to persuade the next nearest relative who was about to leave the country, to join with her in the Petition under the Incompetents' Estates Act, but she flatly refused to do so, stating that she would not become a party to such a shameful, wrongful and disgraceful proceeding. Accordingly, the daughter hastened to present her own Petition and procure the adjudication against her mother before the return to this country of the said next nearest relative. Thus the daughter's said Petition was presented to President Judge Hugh C. Boyle of the Orphans' Court on June 20, 1955, and the hearing thereon was had on July 6, 1955.

The hearing of July 6, 1955, pursuant to which the adjudication of incompetency was made was an *ex parte* hearing, with no Pittsburghers present. The daughter's testimony consisted of falsehoods, half truths, distortions and other misleading statements in reply to leading questions. The "medical" testimony was offered by foreigners to this jurisdiction who had never before known Mrs. Williams and really did not know her then. Nonetheless the doctors who appeared testified to erroneous diagnoses and prognoses, all of which have been completely and entirely refuted if only by the passage of

time and by the excellent mental condition and reasonably good physical condition of your petitioner. The most fantastic refutation of that "medical" testimony could be established by Mrs. Williams and a witness to the fact that the principal witness produced thereat by Mrs. Williams' daughter with the cooperation of said Attorney Craig, subsequently admitted that your petitioner had not been detained and restrained by him because of any medical problem whatever, but only in order to prevent Mrs. Williams from interfering with the prosecution by her daughter of distasteful and ill conceived litigation against Mrs. Williams' family.

At the conclusion of the said hearing, President Judge Hugh C. Boyle of the Orphans' Court appointed the petitioner's daughter and the Mellon National Bank and Trust Company as co-guardians of this Estate. *It should be noted that no guardian of the petitioner's person was then or ever has been sought or appointed.*

Promptly after the said guardianship appointment, the Mellon National Bank and Trust Company became apprised of previously undisclosed litigation which the co-guardian (petitioner's daughter) had planned to prosecute against members of your petitioner's family against the will and better judgment of petitioner. Thereupon the Mellon Bank immediately withdrew as a co-guardian of this Estate, because it would not, or could not by reason of a conflicting interest, maintain such ill considered litigation; and after the Pittsburgh National Bank and the Union National Bank of Pittsburgh declined to accept an appointment as a substituted co-guardian, the only remaining one, Commonwealth Bank and Trust Company, readily accepted the appointment

in October of 1955 to act as co-guardian with petitioner's daughter.

Ever since this joint venture by Cora Williams Murdoch and the Commonwealth Bank and Trust Company as the co-guardians of your petitioner's Estate, they and their agents have been raiding the Estate for excessive commissions, fees and other unwarranted compensation. As a matter of fact, at the time of the marriage of petitioner's daughter, gifts in excess of $160,000.00 were illegally disbursed from this Estate to petitioner's daughter so that she could purchase a mansion in Haverford, Pennsylvania, where she and her husband could and do live luxuriously, while your petitioner has been and is unlawfully and improperly restricted to a mere fraction of her income, with the result that she is unable to live in the manner to which she has always been accustomed. Although it is provided in the Incompetents' Estates Act that gifts cannot be made from the Estate of an incompetent and the cases thereunder so hold, nevertheless the President Judge Hugh C. Boyle for the Orphans' Court approved the gift disbursements.

Far more serious than the deprivations of your petitioner's right to the beneficial use and enjoyment of her Estate, are the dastardly and nefarious deprivations of her individual liberties which naturally would result and flow from such an adjudication of incompetency.

The foregoing background and factual situation form an adequate basis of the procedural matters leading up to your petitioner's urgent need for the granting of her Petition for Change of Venue.

During the more than six weeks of your petitioner's incarceration in the New Jersey State Hospital, her

daughter never visited her; but instead devoted her time to the planning of the incompetency proceeding to get possession and control of petitioner's multi-million dollar Estate, so that she could selfishly and greedily preserve it for herself. Although the daughter had sworn in her Orphans' Court Petition that she had no interests adverse to her mother and actually was thus proceeding for the benefit of her mother and the Estate, all of her actions and activities subsequent thereto showed that she was really hostile to her mother and was motivated entirely by her own greed and for her selfish financial gain.

The chief psychiatrist at the New Jersey State Hospital advised your petitioner that about one month as a patient (with in and out privileges) at Fairmount Farms would be quite adequate to restore her health. Your petitioner, however, was persuaded and inveigled through intimidation and threats of a Court order for the appointment of a guardian of her person, to submit to her daughter's scheme to be placed in the "care" of said Attorney Craig's psychiatrist in Philadelphia (the one who later admitted to your petitioner that she had not been detained because of any mental problem but only to prevent her from interfering with the above mentioned ill considered litigation that her daughter was determined to prosecute) and others subsequently. As a result, your petitioner was kept in restraint for more than four years, during which time she was deliberately doped and drugged by means of excessive and unnecessary medication and sedation.

At this point, the well laid plans of petitioner's daughter and those in combination with her, were getting out of hand, because your petitioner was surviving

the cruel and barbarous mistreatment she was getting and the situation was becoming too well known. Relatives and friends who would have come to petitioner's rescue sooner but for warnings that the "treatment" being administered was required and should not be interfered with, were becoming aware of the fact that they had been misinformed and misled. Thus the only thing left for the daughter to do, was let her mother return to her home in Pittsburgh and await future events.

After returning to her Pittsburgh house, it took a considerably long time for the execessive and unnecessary drugs and sedation to wear off, but petitioner's resulting condition in due course completely cleared up. Consequently your petitioner has since then been leading quite a normal and undisturbed life with her relatives and many friends. Naturally she has been consulting with Pittsburgh attorneys and physicians. Reputable physicians have expressed surprise that anybody could have survived such excessive amounts of sedation and medication, as your petitioner did. Attorneys have advised her that she had two alternative remedies in the Orphans' Court—first, through a petition to vacate the incompetency adjudication on the ground that it was procured through the fraud and misconduct of her daughter and those in combination with her, and second, through a petition for an adjudication of competency. Petitioner preferred the first remedy, but was prevailed upon by prior counsel to seek the second one, being advised that the Orphans' Court would not entertain a petition for a hearing on the issue of fraud.

Cora Hubbard Williams through her former counsel thus was ready, able and willing to establish her

competency about two years ago. Her Petition was well prepared, and very reputable psychiatrists were ready to support it with positive testimony of her competency. Surprisingly, President Judge Boyle of the Orphans' Court would consider it only on his own terms and conditions, *viz.*, that she first submit to re-examination by all of the hostile and adversary psychiatrists so that their testimony too could be produced. Your petitioner refused so to submit, and thereupon she abandoned that proceeding.

Being convinced that she was correct in her original judgment, that the consummately just and proper way in which to proceed was by attacking the fraudulent adjudication of incompetency on the ground that it was procured through fraud, petitioner retained her present counsel after the withdrawal of her prior counsel.

Counsel for Cora Hubbard Williams thereupon promptly prepared Petitions for presentation to the Orphans' Court, seeking a hearing on the alleged fraud and misconduct in the procurement of the adjudication of incompetency. The result should have been a routine issuance of a citation directed to the co-guardians of the Estate as respondents to show cause, if any, why the adjudication should not be set aside and vacated, the co-guardians dismissed, and an accounting filed. President Judge Boyle returned to counsel for Mrs. Williams all but one of those Petitions, which one he passed upon reluctantly. In "passing upon" that Petition, the jurist dismissed it without requiring an answer, and obviously in advance of a hearing. *It was this judgment in advance of the right to be heard which necessitated the further litigation.*

Mrs. Williams had alleged and expected to be able to prove that she was not personally served with a copy of her daughter's Petition and notice of said hearing, as required by the Incompetents' Estates Act and by the Order of Court setting the aforesaid hearing for July 6, 1955; *and further that she was unlawfully deprived of her right to be present with counsel and opposing witnesses;* and furthermore, that had the witnesses who appeared at the hearing on July 6, 1955, been apprised that they would be subjected to cross examination and opposing witnesses, they would have testified differently or would not have appeared at all, partially supportable by the above mentioned admission of the principal witness that Mrs. Williams had not been detained and restrained because of any mental illness, and fully supportable through *expert* medical testimony. *It was concurrently alleged by Mrs. Williams that she was thus deprived of her guaranteed rights under the Constitution and laws of the United States.*

After the erroneous dismissal of Mrs. Williams' Petition by the Orphans' Court, as aforesaid, on June 29, 1962, she proceeded promptly on July 2, 1962, for a review in the Supreme Court of Pennsylvania at No. 2428 Miscellaneous Docket. Although her authoritatively self-sustaining application to the Pennsylvania Supreme Court made it plain that the cause should be reviewed and reversed or remanded with directions to set a hearing on the issue of fraud, nevertheless that Court entered an erroneous Order granting the co-guardians' Motion to Quash. *It was alleged therein too that your petitioner was being deprived of her guaranteed rights under the Constitution and laws of the United States.*

It was argued in the State Courts on behalf of Mrs. Williams that even if it was thought that she could not establish the fraud, no American Court should deprive her of the right to try.

Mrs. Williams thereupon proceeded in the Pennsylvania Supreme Court with the instant Petition for Change of Venue and for Oral Argument Hereon (App. 2-11). On March 19, 1963, the oral argument was heard as noticed (App. 1) at Pittsburgh on behalf of your petitioner only, the respondents failing to appear. In the course of the argument, it was submitted as alleged in paragraph 19 of the Petition (App. 9), that the reasons for the relief sought were far more compelling than the usual and accepted reasons for change of venue, because customarily changes of venue are ordered in cases where prejudice prevents a fair trial or an impartial hearing. In the instant case, incredible as it may seem, the need for the relief sought resulted from an astonishing, unheard of prejudice by reason of which the very hearing itself was unobtainable. *Thus your petitioner was justified in arguing that the denial of such a hearing in and of itself automatically constituted prejudice, whether deliberate or not.*

The said Petition for Change of Venue was authoritatively self-sustaining and should have been granted. Otherwise, as alleged in paragraph 18 (App. 9), "the deprivations of petitioner's property and individual liberties without due process of law will be perpetuated". Nonetheless, the then unanswered and undenied Petition for Change of Venue was denied by Order of Court (App. 11) dated and entered on March 21, 1963.

It is evident from paragraphs 15, 16 and 17 of the Petition for Change of Venue (App. 7-9) that Cora Hubbard Williams was gravely in need of the exercise by the Pennsylvania Supreme Court of its powers of the English Court of King's Bench; and that the Supreme Court of Pennsylvania can change venue in such cases on original jurisdiction "to direct this case to be heard by some Judge against whom no question of prejudgment can be urged" (App. 8); and that these powers of the Pennsylvania Supreme Court are derived from the Act of May 22, 1772, 1 Sm. L. 131, Section 13, as enlarged by the Act of June 16, 1836, P.L. 784, Section 1 (App. 8), 17 Purdon's Penna. Statutes Annotated, section 41.

It follows from the fact that petitioner's Petition for Change of Venue in the Pennsylvania Supreme Court was an original proceeding, that the only record necessary for this Honorable Court's consideration is the record in that Court; and the only proper matter of record therein is the said Petition appended hereto (App. 2-11) and the Order (App. 11) entered thereon.

It should be pointed out to this Honorable Court that every attempt and effort on the part of your petitioner to obtain a hearing on the issue of fraud has been opposed by the co-guardians of her Estate who actually are the respondents. These wrongful activities and adversary efforts on the part of the involved Cora Williams Murdoch and the Commonwealth Bank and Trust Company are in direct conflict with their sworn obligations and duties to proceed and act for the best interests of your petitioner and her Estate. Thus Mrs. Cora Hubbard Williams is justified in arguing *a fortiori* that the Pennsylvania State Courts are prejudiced

against her and her cause and in favor of her adversaries; as otherwise the respondents should join in petitioner's prayer for a hearing, and failing to do so, unprejudiced Courts would order the hearing.

After the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania had positively refused to protect and enforce your petitioner's constitutional and legal right to a hearing on the issue of the fraud in the procurement of the incompetency adjudication against her, followed by the Pennsylvania Supreme Court's refusal of her right to a change of venue (none of which State Courts adjudicated the federal question relating to the denials of the deprivations of your petitioner's property and individual liberties without due process of law), Mrs. Cora Hubbard Willims has no legal alternative but to present the instant Petition for a writ of certiorari.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I. The Pennsylvania Supreme Court Has Erroneously Decided A Federal Question Of Substance Not In Accord With Applicable Decisions Of This Honorable Court.

The federal question of substance is whether or not a litigant has the right to a change of venue when the Court of original jurisdiction has deprived her of the right to be heard in advance of judgment; and whether or not the denial of change of venue, which *ipso facto* perpetuates the denial of the right to be heard in advance of judgment, constitutes a denial of due process of law in violation of the Fourteenth Amendment to the Constitution.

The Pennsylvania Supreme Court which had previously sanctioned the decision of the Orphans' Court of Allegheny County, Pennsylvania, whereby Mrs. Williams was denied her constitutional and legal right to a hearing on the issue of fraud in the procurement of an adjudication of incompetency against her, entered its judgment (App. 11) denying Mrs. Williams' Petition for Change of Venue (App. 2). It is respectfully submitted that in so doing, the Pennsylvania Supreme Court decided that federal question of substance not in accord with applicable decisions of this Honorable Court.

It is elementary that the right to be heard in advance of judgment is the most fundamental of due process of law, and no authorities need be cited in support of this proposition. *It necessarily follows that a*

denial of change of venue which perpetuates the refusal of a litigant's right to a hearing on the issue of fraud constitutes a deprivation of the right to due process of law. Thus your petitioner, being the victim of such deprivations, is desperately in need of the protection and enforcement of her rights to due process of law as guaranteed by the Fourteenth Amendment.

The Petitions presented on behalf of Mrs. Cora Hubbard Williams, petitioner, in the Orphans' Court of Allegheny County, Pennsylvania, and in the Supreme Court of Pennsylvania sought a hearing on the issue of fraud in the procurement of an adjudication of incompetency, whereby guardians of her Estate (but not of her person) were appointed.

Mrs. Williams had alleged therein that she was not given notice and the right to be heard in that *ex parte* proceeding; that had she been properly notified and afforded her right to be present with counsel, the adjudication of incompetency would not have been entered against her; that had the adversary witnesses at the *ex parte* hearing been on notice that they would be subjected to cross examination and opposing witnesses, their testimony would have been different or they would not have appeared at all; that the "medical" testimony at the *ex parte* hearing consisted of unsupported and insupportable diagnoses and prognoses by doctors who were neither competent nor qualified to offer such diagnoses and prognoses concerning your petitioner; and that the testimony of her unbalanced daughter, who had selfishly and for her own unjust enrichment instigated and prosecuted the incompetency proceeding to procure the possession and control of petitioner's multi-

million dollar Estate, consisted of falsehoods, half truths, distortions and other misleading statements in reply to leading questions. Furthermore, your petitioner had never become the victim of designing persons, positive proof of which is essential in a proceeding under the Pennsylvania Incompetents' Estates Act, the sole purpose of which is to protect the Estates of incompetents from designing persons.

Mrs. Williams has certainly done all possible in the State Courts to try to obtain a hearing on the issue of fraud. There is no question that the Judges of the Orphans' Court and the Justices of the Pennsylvania Supreme Court knew precisely what relief was sought from them by Mrs. Williams. Similarly there is no doubt that they will never grant that hearing to which she is entitled unless they are compelled to do so by this highest judicial tribunal.

It is understandable why the respondent co-guardians have repeatedly opposed any such hearing, because they are involved. But why have the jurists repeatedly refused to grant the hearing? Since they have no interest in the outcome, why do they not let Mrs. Williams proceed? If for some unjustifiable reason those State jurists believe that Mrs. Williams cannot establish the fraud, they nevertheless have no authority to deprive her of the right to try. This is a right which they did not give to Mrs. Williams and cannot take away from her. This right was bestowed through the Fourteenth Amendment which all of the jurists have sworn to uphold.

Mrs. Williams has obviously been deprived of substantial property and her individual liberties without due process of law; *but is not the taking of one's property and rights through a fraudulent incompetency adjudica-*

tion the lowest form of taking? When such a victim is not afforded her right to be heard on the fraud issue, is she not permanently trapped? Under such circumstances, should not the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States come to her rescue?

II. This Is a Cause Of Public Importance.

The judgment sought to be reviewed, if not reversed, could adversely affect the constitutional and legal rights of all. The vicious detriment to your petitioner is incidental to that of the public. If the instant deprivations of property and individual liberties without due process of law could be inflicted upon one who has enjoyed the financial and social position of Mrs. Cora Hubbard Williams, then they could be visited upon anybody. Thus it is respectfully submitted that this Petition is not the sort of application for relief which this Honorable Court might view as a matter personal only to Mrs. Williams; but rather as a matter generally disaffecting the constitutional and legal rights of the public, and, therefore, requiring a reversal by this Honorable Court.

It is bad enough to proceed with an ex parte incompetency hearing pursuant to which a person's multi-million dollar Estate is taken; but it is far worse to refuse the victim a hearing on the issue of fraud in the procurement of the incompetency adjudication, when the fraud is subsequently brought to the attention of the Court. What other prejudgment could be more cruel or unconstitutional? What other prejudgment should more quickly shock the Court's conscience into protecting and enforcing the victim's federally guaranteed right to due process of law under the Fourteenth Amendment?

CONCLUSION

The reasons relied on for the allowance of the writ are cogent and impelling.

The Pennsylvania Supreme Court has erroneously decided, but not adjudicated, a federal question under the Fourteenth Amendment not in accord with applicable decisions of this Honorable Court, with the result that your petitioner has been deprived of a hearing on an issue of gross fraud whereat she could defend herself from an unconstitutional and unlawful taking of substantial property and her individual liberties without due process of law. This cause is one of public importance and should be viewed as one in which the benefits to your petitioner from the sought review and reversal are only incidental to those of the public in general. Furthermore, the judgment sought to be reviewed so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision.

Wherefore, this Petition for a writ of certiorari should be granted.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania

APPENDIX

SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE: ESTATE OF CORA HUBBARD WILLIAMS, an alleged incompetent.	Misc. Dkt. No. 2483. Petition Sur Proceedings in the Orphans' Court of Allegheny County at No. 2750 of 1955.

NOTICE

To: Robert W. Duggan, Esquire
1408 Frick Building
Pittsburgh 19, Pennsylvania
and
John Stewart, Jr., Esquire
1606 Philadelphia National Bank Building
Philadelphia 7, Pennsylvania

PLEASE TAKE NOTICE that Cora Hubbard Williams' Petition for Change of Venue and for Oral Argument Hereon has been filed in the above entitled matter; that the said Petition will be presented to the Pennsylvania Supreme Court, 8th Floor, City-County Building, Pittsburgh, Pennsylvania, on Tuesday, March 19, 1963, at ten o'clock A.M., or as soon thereafter as counsel can be heard; and it is required that an Answer to the said Petition be filed prior to the presentation thereof, if an Answer will be filed.

Paul Ginsburg, Attorney for Petitioner
Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania
412-471-6060

PETITION FOR CHANGE OF VENUE AND FOR ORAL ARGUMENT HEREON

To the Honorable, the Chief Justice of Pennsylvania and the Associate Justices of the Supreme Court of Pennsylvania:

The Petition for Change of Venue of Cora Hubbard Williams, petitioner, respectfully represents:

1. She is a citizen and resident of the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania.

2. On July 6, 1955, President Judge Hugh C. Boyle of the Orphans' Court of Allegheny County entered an erroneous Order of Court pursuant to an *ex parte* Hearing in the above entitled proceedings whereby your petitioner was adjudicated an incompetent and guardians were appointed for her multi-million dollar Estate.

3. The said incompetency proceedings were unlawfully instigated by petitioner's daughter, Cora Williams Murdoch, who, together with the Commonwealth Bank and Trust Company, became Court appointed co-guardians of petitioner's Estate.

4. The expressed purpose of those proceedings was, of course, to protect your petitioner and her Estate from becoming the victim of designing persons; but your petitioner had never become the victim of designing persons, as was apparent from the record in the above entitled proceedings and particularly the testimony therein of petitioner's daughter, your petitioner never even having spent her net income. As a matter of fact, the provisions of the Incompetents' Estates Act were deliberately misused by petitioner's daughter and others in combination

with her to defeat the real purposes of that Act, and actually they were the designing persons who victimized your petitioner for the nefarious purpose of gaining illegal control of petitioner's multi-million dollar Estate so that it could be preserved for the petitioner's daughter, and in the meantime misused for the unjust enrichment of the said co-guardians of the Estate and those in combination with them. Such abuse of the Incompetents' Estates Act was the very thing over which this Honorable Court had expressed grave concern and particularly in *Colt's Case*, 215 Pa. 333. In that case, this Honorable Court cited *Hoffman's Estate*, 209 Pa. 357, wherein the then Chief Justice stated that it is a "dangerous Statute easily capable of abuse by designing relatives to accomplish the very wrong intended to be guarded against, and therefore to be administered by the courts with the utmost caution and conservatism". See also *Bryden's Estate*, 211 Pa. 633, wherein this Honorable Court stated: "This is a very clear case of attempt by children to take their mother's property out of her control not in her interest but in their own, and is an illustration of the dangers of the statute".

5. As a result of the unlawful activities of petitioner's daughter and those in combination with her, excessive medication and drugs were unnecessarily and unprofessionally administered to your petitioner so that she could not be present herself and with counsel and witnesses at the hasty Hearing held on July 6, 1955; false representations were made in and out of the lower Court concerning petitioner and her health; false and insupportable diagnoses were offered at said Hearing in the lower Court, all by foreigners to this jurisdiction who had never before known your petitioner, which diagnoses

have been positively refuted by the very passage of time and the presently excellent condition enjoyed by your petitioner during the past few years since her release from unlawful restraint.

6. Had the adversary witnesses at the Hearing of July 6, 1955, known or been advised that they would have been subjected to cross examination and opposing witnesses, they would not have testified as they did.

7. Your petitioner is not an incompetent, and has never been legally adjudicated an incompetent.

8. The adjudication of incompetency erroneously entered in the lower Court by the Honorable Hugh C. Boyle was obtained through the fraud and misconduct of Petitioner's daughter and those in combination with her, with the result that said adjudication is void and of no effect.

9. The said adjudication of incompetency was entered in violation of petitioner's rights under the Constitution and laws of the United States because she was not legally served with notice of the Hearing and obviously was deprived of the right to be represented and heard. Notice and the right to be heard in advance of judgment are the fundamentals of due process of law. See *Covey, Committee v. Town of Somers*, 351 U.S. 141, wherein the Supreme Court of the United States quoted from *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-315, as follows: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them on opportunity to present their objections. . . .

Appendix.

When notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." See also *Commonwealth v. Groh*, 10 Pa. C.C. 557, wherein it was held that failure to give notice is sufficient cause to set aside lunacy proceedings; and the appointment of a committee was revoked and the proceedings set aside.

10. It is respectfully submitted that an Opinion expressed by the late Chief Justice Maxey in the case of *Denner v. Beyer*, 352 Pa. 386, 1945, is quite pertinent and applicable to the instant situation. In reversing a lower Court decision for an alleged weak-minded person, Chief Justice Maxey declared: "It is a serious thing to deprive any person of the control of their own property or of their right to dispose of it by will. This right will be judicially taken away from a person only after preponderating proof of his lack of mental capacity to manage his own business affairs. There is no such proof in this record. In fact, the proof strongly preponderates in favor of this respondent. If later she exhibits such feeble mindedness or mental defectiveness as is likely to result in the dissipation or loss of her property, the courts are open for appropriate proceedings."

11. Your petitioner's daughter, in her original Petition pursuant to which said Hearing of July 6, 1955, was had, untruthfully swore that her interests were not adverse to those of her mother, which allegation has been refuted throughout the lower Court proceedings by her repeated adversary activities, such as obtaining illegal gifts from her mother's Estate in excess of $160,000.00 and otherwise unjustly enriching herself,

while depriving her mother of adequate income from the Estate so that she may continue to live in the manner to which she was always accustomed, as well as by lending her best efforts to perpetuating the shameful proceedings against her mother. It is elementary that proceedings such as the instant one in the lower Court, are not to be adversary proceedings but should be brought only in the best interests of the one whose property is to be protected. Nevertheless, these co-guardians of your petitioner's Estate have been adversary to your petitioner throughout these entire proceedings, and have been acting strictly in their own selfish interests. Your petitioner's daughter, Cora Williams Murdoch, is a resident of Haverford, Montgomery County, Pennsylvania. The co-guardian Commonwealth Bank and Trust Company is a corporation engaged in the banking and trust business, with its principal office at 312 Fourth Avenue, Pittsburgh 22, Pennsylvania.

12. All of the foregoing averments of fact were brought to the attention of President Judge Boyle of the Orphans' Court in Petitions presented on behalf of Cora Hubbard Williams, the purpose being to have a hearing wherein your petitioner would be afforded the opportunity to establish the fraud and misconduct of her adversaries. The Honorable Hugh C. Boyle, however, refused to allow the alleged incompetent the usual and ordinary processes of that Court by refusing to permit the filing and or consideration of Petitions on her behalf. Had your petitioner been afforded such a hearing, she not only could have established that the said adjudication of incompetency was and is void for the fraud and misconduct of her adversaries; but also that the original Petition of her daughter, pursuant to which the adjudi-

cation was made, should have been stricken off for the failure of its verification to comply with and conform to the provisions of Rule 1024 (a) of the Pennsylvania Rules of Civil Procedure.

13. About two years prior to those denials of due process of law, Judge Boyle actually refused to entertain Mrs. Williams' Petition for restoration of competency, unless on his own terms and conditions which might very likely interfere with his favorable consideration of that Petition.

14. It is respectfully submitted that the prejudiced Honorable Hugh C. Boyle has refused to afford your petitioner her legal and constitutional right to a hearing on the said issue of fraud and misconduct of her adversaries, and has made it plain that he will continue to do so. It is further submitted that the prejudiced Orphans' Court Judge Boyle has refused to allow your petitioner a hearing on the issue of restoration of competency, except on his own detrimental terms and conditions, and has made it plain that he will continue to do so. Furthermore, none of the other Orphans' Court Judges will hear or even entertain any matter in connection with the said proceedings for the reason that it is Judge Boyle's case. It necessarily follows that your petitioner has been and is foreclosed from seeking and establishing any of her legal and constitutional rights in the prejudiced Orphans' Court of Allegheny County.

15. In view of the foregoing, Cora Hubbard Williams, petitioner, is gravely in need of the exercise of this Honorable Court's powers of the English Court of King's Bench, to the end that this Honorable Court will

enter an Order changing the venue of the said Orphans' Court proceeding.

16. The Supreme Court of Pennsylvania can change the venue in civil cases on original jurisdiction.

17. As was pronounced by this Honorable Court in the case of *Apex Hosiery Company v. Philadelphia County, et al.*, 331 Pa. 177, 1938, "This Court has all the powers of the English Court of King's Bench by the Act of May 22, 1722, 1 Sm. L. 131, Section 13: The Act of June 16, 1836, P.L. 784, Section 1, enlarges these powers. See *Schmuck v. Hartman*, 222 Pa. 190. Article III, Section 23, of the Constitution does not take away from the Supreme Court any of its inherent powers, nor did the acts passed by the legislature pursuant to that section. See *Commonwealth v. Reilly*, 324 Pa. 558". This Court further said in *Summers v. Kramer*, 271 Pa. 189, at p. 198: "The Act of 1836 applies 'as well in criminal as in civil pleas or proceedings,' and the Court of King's Bench, to whose jurisdiction ours is assimilated under the Act of 1722, had 'cognizance of both civil and criminal causes': 3 Blackstone's Commentaries *42; Coke's Institutes of the Laws of England *71; 6 Bacon's New Abridgment of the Law 438. Under these statutes and decisions it is clear we have the right, without considering what the court below could or should have done, to direct this case to be heard by some judge against whom no question of prejudgment can be urged; . . ." See also *Wattson v. Chester & Delaware River R. R. Co.*, 83 Pa. 254, where Chief Justice Agnew at p. 256 indicated that the power to change the venue in civil cases was not disturbed by the Constitution and statutes passed thereunder. *Little v. Wyoming County*, 214 Pa. 596, at p. 599, refers only to the power

of the county courts and does not concern this Court. In *Crawford's Estate*, 307 Pa. 102, at p. 107, we said: "When the legislature has not acted on a cause which is of sufficient importance to require a change of venue, the right to such change is not lost, and the power is still lodged in the Supreme Court."

18. There is no question that this Honorable Court has the jurisdiction and power to change the venue of the said proceeding in the Orphans' Court of Allegheny County to the Orphans' Court of another county of the vicinage; and it is respectfully submitted that the Court should thus exercise its power. Otherwise, the deprivations of petitioner's property and individual liberties without due process of law will be perpetuated. The only alternative relief to be granted your petitioner is the assignment by this Honorable Court of an Orphans' Court Judge from another county of this Commonwealth to preside over the said proceedings in the Orphans' Court of Allegheny County, with a prompt hearing on the issue of the fraud and misconduct of your petitioner's adversaries.

19. The reasons for the relief sought herein by your petitioner are far more compelling than the usual and accepted reasons for change of venue. Customarily, changes of venue are ordered in cases where prejudice prevents a fair trial or an impartial hearing. In the instant case, incredible as it may seem, the urgent need for change of venue results from an astonishing, unheard of prejudice by reason of which the very hearing itself is unobtainable. The prejudice of the Orphans' Court of Allegheny County in the instant matter should shock the conscience of this Honorable Court into speedily granting the requested relief.

WHEREFORE, Cora Hubbard Williams, petitioner, respectfully prays that this Honorable Court will enter an Order changing the venue of the proceedings in the Orphans' Court of Allegheny County at No. 2750 of 1955, In Re: Estate of Cora Hubbard Williams, an alleged incompetent, to the Orphans' Court of another county of the vicinage; and, in the alternative, assigning an Orphans' Court Judge of another county of this Commonwealth to preside over the said proceeding in the Orphans' Court of Allegheny County, the purpose of the change of venue and alternative assignment of a Judge being the conduct of a prompt hearing on the issues of the fraud and misconduct of your petitioner's adversaries in obtaining the adjudication of incompetency entered in the Orphans' Court of Allegheny County on July 6, 1955.

Respectfully submitted,

Cora Hubbard Williams, Petitioner

Paul Ginsburg, Attorney for Petitioner
Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania
412-471-6060

Appendix.

AFFIDAVIT

Commonwealth of Pennsylvania }
County of Allegheny } ss.

Before me, a Notary Public in and for said County and State, personally appeared Cora Hubbard Williams who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Petition for Change of Venue are true and correct.

Cora Hubbard Williams.

Subscribed and sworn to before me this fourteenth day of March, 1963.

VIRGINIA FLEMING
Notary Public
Pittsburgh,
Allegheny Co., Pa.

My Commission Expires April 18, 1966.

ORDER OF COURT

"March 21, 1963

Petition Denied.

PER CURIAM"
